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OFFICE OF PETITIONS

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In re Patent No. 7,605,138
Issued: October 20, 2009
Application No. 10/613,524
Filed: July 3, 2003
Attorney Docket No.
C1037.70042US00

: DECISION ON REQUEST
: FOR RECONSIDERATION
: OF PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT filed May 19, 2010. Applicant requests that the determination of patent term adjustment be corrected from 1830 days to 1308 days. Applicant requests this correction in part on the basis that the Office will take in excess of three years to issue this patent and in light of the recent court decision in Wyeth v. Dudas, No. 07-1492 (D.D.C. September 30, 2008).

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED** to the extent indicated herein.

The term of the above-identified patent is extended or adjusted by one thousand three hundred eight (1308) days.

On December 18, 2009, patentee submitted a petition under 37 CFR 1.705(d) and fee. On April 16, 2010, patentee filed a Request for Recalculation of Patent Term Adjustment in View of Wyeth. On April 19, 2010, the Office mailed a decision granting the petition under 37 CFR 1.705(d) to the extent that a certificate of correction would be issued indicating that the term of the patent was extended or adjusted by 1254 days. On April 22, 2010, the Office mailed a "DECISION ON REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION" indicating that the patent term adjustment had been determined to be 1830 days.

The Office notes that the decision of April 22, 2010, was issued in error as it accorded patentee 522 more days of patent term adjustment than were warranted. Accordingly, the decision of April 22, 2010, is withdrawn. The present decision supersedes the decision mailed on April 22, 2010.

The Office has determined that the patent term adjustment for the above-identified patent is 1308 days. The 522 additional days of adjustment will be removed.

The Office will sua sponte issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given one (1) month or thirty (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand three hundred eight (1308) days**.

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT
UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,605,138 B2
DATED : October 20, 2009
INVENTOR(S) : Arthur M. Krieg

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (1830) days

Delete the phrase "by 1830 days" and insert – by 1308 days--